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League of Women Voters v. The City of New Orleans: Standing or Political Question?

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motivation to prove a violation does not exist when an employer has committed himself to violating, through a supervisor, the protected rights of the employees. By giving the instructions, the employer not only has manifested an intention, but also has done all that he possibly can to bring about the violation. The success of the effort depends on whether or not the supervisor obeys the employer's orders. Despite this, the effective interference standard, as employed in *Belcher Towing* and the line of cases before it, disregards the important fact that the employer's manifested intention is at the same time an act that tends to violate the protected rights of employees. And the tendency to violate employee rights has long been sufficient to constitute an 8(a)(1) violation.[79]

The *Belcher Towing* standard is problematical. It does nothing other than provide the employer an opportunity to avoid violating the Act by refraining from dismissing the supervisor who refuses to obey his instructions. For the employer who is willing to risk Board charges if a supervisor *does* follow instructions to commit an unfair labor practice, the *Belcher Towing* standard provides something like an incentive. The employer knows that if his supervisor refuses to follow the instructions, the employer can avoid unfair labor practice violations by keeping the supervisor on the payroll. At the same time, *Cannon Electric* and its theory of attempted interference remains operative. A blanket application of *Cannon Electric* not only would remove employer incentive to coerce employees through the actions of a supervisor, but also would remove employer opportunity for self-absolution. In the area of labor law, absolution remains in the exclusive province of the Board.

David Michael Hunter

League of Women Voters v. The City of New Orleans: STANDING OR POLITICAL QUESTION?

The League of Women Voters of New Orleans, a nonprofit organization, and two New Orleans taxpayers sued for a writ of manda-

79. In 1948, the Sixth Circuit Court of Appeals said that the test for determining an 8(a)(1) violation is whether "the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." NLRB v. Ford, 170 F.2d 735, 738 (6th Cir. 1948). This proposition was reiterated by the seventh cicuit eleven years later: "No proof of coercive intent or effect is necessary under section 8(a)(1) of the Act, the test being 'whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act.'" Time-O-Matic, Inc. v. NLRB, 264 F.2d 96, 99 (7th Cir. 1959).

mus[1] to compel various local and state agencies and officials[2] to correct the millage adjustments for 1978. Plaintiffs sued to compel correction of the millage adjustments because they believed that such correction was directed by Act 617 of 1977, as amended by Act 614 of 1978.[3] The Louisiana Supreme Court *held* that the plaintiffs lacked *standing* to sue in their capacity as taxpayers of the City of New Orleans. The court stated that the plaintiffs' general allegations, that as a result of reduced revenues they would suffer a loss of vital services, were not peculiar to the plaintiffs themselves or even to taxpayers as a class, but were common to the public at large. *League of Women Voters of New Orleans v. The City of New Orleans*, 381 So. 2d 441 (La. 1980).

In the 1968 decision of *Flast v. Cohen*,[4] Chief Justice Warren described the concept of justiciability as encompassing two parallel

1. LA. CODE CIV. P. art. 3861-63. Whether a writ of mandamus could have issued to require the agencies and officials to perform their duties was an issue never reached by the court. Yet, the Act requires that adjustment errors be corrected, and it provides mechanisms for such correction by directing the City Council to recompute and the legislative auditor to order changes necessary to correct any error or errors. Thus, it seems, a writ of mandamus was the proper remedy.

2. The local and state agencies and officials were the City of New Orleans and its Mayor, the City Council, the members of the City Council individually, the Board of Levee Commissioners of the Parish of Orleans, the Board of Assessors of Orleans Parish, and the assessors who comprise the Board. League of Women Voters v. The City of New Orleans, 381 So. 2d 441 (La. 1980).

3. Article VII, section 23 of the 1974 Louisiana Constitution provided for a new system of property appraisal in Louisiana. As a result of this new system, each tax recipient body was to adjust its millage for 1978 so that it would provide for the same revenue as was collected in the preceeding year. LA. CONST. art. VII, § 23.

The Act required the assessors of each parish to furnish the parish taxing authorities with a correct statement of the assessed value of taxable property on the tax rolls in 1977. 1977 La. Acts, No. 617, *as amended by* 1978 La. Acts, No. 614. The assessors submitted erroneous figures to the City Council and the Levee Board, and as a result of this erroneous information the 1978 millage was incorrectly fixed. League of Women Voters of New Orleans v. The City of New Orleans, 381 So. 2d 441, 444 (La. 1980).

Section five of the Act further requires the City Council and the Levee Board to recompute and determine the millage that should have been levied on the 1978 tax rolls and to use the recomputation to impose an adjustment for 1979 solely to recoup revenue losses for 1978. This process is designed to correct any errors that may have occurred. The City Council did meet in order to recompute, as required by section five, and did pass an ordinance to that effect; however, the Council did not impose the adjustment. 381 So. 2d at 444.

Finally, section seven of the Act authorizes and requires the legislative auditor to review the millages of each tax recipient body to determine whether or not they are in compliance with the Act and the constitution. Furthermore, the legislative auditor shall order changes in the amount of millages levied if he determines that an error or errors have been made in the adjustment of the millages.

4. 392 U.S. 83 (1968). *See* C. WRIGHT, LAW OF FEDERAL COURTS § 12, at 34-35 (1976).

yet distinct requirements. The first necessitates the presence of genuine and actual legal issues presented by truly *adverse* parties and in a form capable of resolution by the judicial process.[5] The second limitation recognizes that the concept of justiciability defines the distinct role assigned to the judiciary in order to maintain the integrity of a tripartite allocation of power. Arising from the doctrine of separation of powers, this limitation assures that courts will not intrude into spheres of authority committed to other branches of government or to the populace.[6] The latter is commonly referred to as the *political question* doctrine.

One device used by Louisiana courts to ensure that a case is appropriate for judicial resolution is standing,[7] a limitation which requires the existence of specifically ascertainable interests in the litigating parties. The standing requirement is reflected in Code of Civil Procedure article 681's mandate that the party plaintiff have a real and actual interest in the matter.[8] The interest requirement in the party plaintiff promotes the zealous investigation of law and fact and ensures a fair presentation and development of the issues by truly adverse parties.[9]

In *Louisiana Independent Auto Dealers Association v. State*,[10] the Louisiana Supreme Court noted that "[t]he degree of adversity required to present the issues will vary from case to case, depending upon the issue presented."[11] The court further recognized that "[f]acile rules of thumb are not . . . very helpful in the borderline

5. *See* Lousiana Independent Auto Dealers Ass'n v. State, 295 So. 2d 796, 801 (La. 1974); Petition of Sewerage and Water Board of New Orleans, 248 La. 169, 175, 177 So. 2d 276, 278 (1965); State v. Board of Supervisors, 228 La. 951, 955, 84 So. 2d 597, 600 (1955). *See also* Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240-42 (1937); Nashville, C. & St. L. Ry. v. Wallace, 288 U.S. 249, 263-64 (1933); Abbott v. Parker, 259 La. 279, 307, 249 So. 2d 908, 918 (1971) (the Louisiana Supreme Court defined "justiciable controversy" in a similar manner).

6. *See* U.S. CONST. arts. I, II & III; LA. CONST. art. II, §§ 1 & 2. *See also* Commercial Trust Co. of New Jersey v. Miller, 262 U.S. 51 (1923); First Municipality v. Pease, 2 La. Ann. 538 (1847).

7. *See* Guidry v. Roberts, 331 So. 2d 44, 47 (La. App. 1st Cir. 1976). *See also* Hainkel v. Henry, 313 So. 2d 577, 579 (La. 1975); Abbott v. Parker, 259 La. 279, 249 So. 2d 908, 918 (1971).

8. LA. CODE CIV. P. art. 681 provides: "Except as otherwise provided by law, an action can be brought only by a person having a real and actual interest which he asserts."

9. *See* Louisiana Independent Auto Dealers Ass'n v. State, 295 So. 2d 796, 799 (La. 1974). "Courts of justice are to decide real contests; they are never to be used as instruments to work injustice, wound the feeling or affect the interests of others, through the intervention of fictitious or uninterested parties." Livingston v. D'Orgenoy, 1 Mart. (O.S.) 87, 95 (La. 1810).

10. 295 So. 2d 796, 801 (La. 1974).

11. *Id.* at 801.

action—in determining whether the minimum elements of 'interest' and 'adversity' are present."[12]

The interest asserted by the taxpayer plaintiffs in *League of Women Voters* was that the failure to adjust millage rates and the concomitant loss of revenues to the Levee Board and the City of New Orleans would "cause imminent and irreparable harm by jeopardizing petitioners Turner and Wisdom's individual interest in receiving sufficient police, fire and flood protection, and other essential services."[13] The supreme court rejected the plaintiffs' general allegations of jeopardy to their interests in receiving vital services, noting that such interests were "not peculiar to plaintiffs themselves or even to taxpayers as a class, but are common to the public at large."[14] The court based its decision upon *Schoeffner v. Dowling*[15] and other Louisiana decisions[16] requiring that the plaintiff express a "special and peculiar interest" when seeking to compel performance of a duty owed to the public at large.[17]

The court felt compelled to distinguish the first circuit opinion of *Bussie v. Long*,[18] wherein the Louisiana Supreme Court refused writs. "Unlike the taxpayers in Bussie," observed the court, "plaintiffs here do not seek to restrain an increase in the burden of taxation. Instead they seek to compel an increase."[19] This distinction is perhaps inaccurate. The plaintiffs in *Bussie* sued to compel the Tax

12. *Id.*, *quoting* J. MOORE, FEDERAL PRACTICE § 57.15 (1973).

13. 381 So. 2d at 446. The League of Women Voters characterized their interest: "The noncollection of these funds will also thwart two basic goals of the petitioner League, which are, to find increased sources of revenue for City government and to ensure the equitable distribution of taxes based upon principles of ability to pay and benefits received." *Id.*

14. *Id.* at 447.

15. 158 La. 706, 104 So. 624 (1925).

16. Marshall v. Town of Marksville, 116 La. 746, 41 So. 57 (1906) (taxpayers sued the town to set aside an election which resulted in favor of issuing licenses for the sale of liquor); Jumonville v. Hebert, 170 So. 497 (La. App. 1st Cir. 1936) (taxpayer sued to compel an officer to enforce certain gambling laws). *See* Black v. New Orleans Ry. & Light Co., 145 La. 180, 82 So. 81 (1919) (suit by New Orleans taxpayers against the City and street railway company to enjoin the collection of a car fare increase—5¢ to 6¢); City of Alexandria v. Policy Jury of Rapides Parish, 139 La. 635, 71 So. 928 (1916) (appeal by taxpayers from a judgment annulling an election voting for prohibition in the parish); Akin v. Caddo Parish Policy Jury, 234 So. 2d 203 (La. App. 2d Cir. 1970) (twenty-nine taxpayers sued to enjoin Caddo Parish Policy Jury from expanding and enlarging the parish courthouse and to prohibit the removal of any live oaks surrounding the courthouse).

17. 381 So. 2d at 447.

18. 286 So. 2d 689 (La. App. 1st Cir. 1973), *cert. denied*, 288 So. 2d 354 (La. 1974). The Louisiana Supreme Court in denying writs stated that there was no error as to the court of appeal's judgment of law.

19. 381 So. 2d at 447.

Commission to implement an equalization of statewide property *ad valorem* assessments pursuant to Louisiana Constitution article X, sections one through twelve, and Louisiana Revised Statutes 47:1951-2000.[20] There is no indication in the *Bussie* opinion that equalization of property assessments would result in a decrease in the plaintiffs' tax burden. On the contrary, the opposite result seems likely.[21] One contemporary writer noted that "generally speaking, new homes were placed on the tax rolls at between 5% and 30% of their fair market value"[22] as opposed to all properties being assessed at their actual cash value. Little distinction can be drawn between *Bussie* and *League of Women Voters*. Both cases involve plaintiffs suing as taxpayers to compel public officers to comply with legislative mandates, and in both cases compliance could possibly increase the plaintiffs' tax burden.

Dissenting in *League of Women Voters*, Justice Dixon observed that "[t]he 'special and peculiar' interest of plaintiffs in *Bussie* . . . was no more 'special and peculiar' than that of plaintiffs in this case."[23] Similarly, Justice Dennis expressed concern that, in light of recent jurisprudence[24] and the absence of a statute restricting taxpayers' access to the courts, the rule adopted by the majority was unduly restrictive.[25] Consequently the taxpayer-plaintiffs in *League of Women Voters* appear to have demonstrated a sufficient interest to assure adversity. Their alleged loss (in city revenues and vital services) positioned them opposite the City of New Orleans and the Board of Assessors, both of whom were being asked to comply with the legislative tax scheme. Although more difficult to individualize than overtaxation (which creates a more readily identifiable burden upon each taxpayer), the plaintiff's interest is nonetheless sufficient to satisfy the traditional purpose of the standing requirement, *i.e.*, the parties were sufficiently adverse to ensure an adequate development of the issues and of the law and facts presented.[26]

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20. 286 So. 2d at 696.

21. *Id.* at 704.

22. Conroy, *Louisiana Constitution of 1974: Taxation*, 21 LOY. L. REV. 97, 102 (1975). *See* Bussie v. Long, 286 So. 2d 689, 702-03 (La. 1973).

23. 381 So. 2d at 449 (Dixon, J., dissenting).

24. Woodard v. Reily, 244 La. 337, 152 So. 2d 41 (1963); Stewart v. Stanley, 199 La. 146, 5 So. 2d 531 (1941); Upper Audubon Ass'n v. Audubon Park Comm'n, 329 So. 2d 206 (La. App. 4th Cir.), *cert. denied*, 333 So. 2d 240 (La. 1976).

25. 381 So. 2d at 449 (Dennis, J., dissenting).

26. Some commentators suggest that the sole fact that citizens and taxpayers often have a substantial financial investment in the lawsuit, from which none of them will gain specific monetary benefits, indicates an exceptional kind of interest, indicative of a desire to zealously pursue one's contentions. *See* Jaffe, *The Citizen as Litigant in Public Actions: The Non-Hohfeldian of Ideological Plaintiff*, 116 U. PENN.

Even if one were to find that the interest of the plaintiffs in *League of Women Voters* was insufficient for purposes of justiciability, the interest was nevertheless as strong as that asserted by plaintiffs in previous decisions,[27] particularly *Bussie*. Furthermore, Louisiana need not be strictly bound by the traditional requirement of adversity in light of the provisions of the 1974 Louisiana Constitution relative to jurisdiction[28] and of the 1974 decision of the Louisiana Supreme Court in *In re Gulf Oxygen*.[29]

The Louisiana Constitution of 1921, in article VII, section 35, required that "[t]he District Courts, except in the parish of Orleans, shall have original jurisdiction in all civil matters regardless of the amount *in dispute*, or the fund to be distributed . . . and in all *cases* where no specific amount is *in contest* . . . ."[30] By contrast, the Lou-

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L. REV. 1033, 1037-38 (1968); Kates & Barker, *Mootness in Judicial Proceedings: Toward a Coherent Theory*, 62 CALIF. L. REV. 1385, 1410 (1974). This is an interesting theory, yet one which disregards totally the purpose justifying the requirement that the parties be truly *adverse*.

Other writers profess that a public suit brought by citizens and taxpayers may be useful in numerous ways. A citizens' suit can, for instance, provide a mechanism for courts to settle disputes when differential interests are involved; such a suit recognizes that all citizens have a stake in the enforcement of laws and can provide a solution to problems when the political process is unresponsive. Furthermore, a public suit can provide an opportunity for the vindication of interests in a neutral forum, where an individual can have an existing law enforced, despite the fact that only a minority of citizens are aware of the violation. Thus, a public interest furthers the democratic process and makes government more responsive. Tucker, *The Metamorphosis of the Standing to Sue Doctrine*, 17 N.Y.L.F. 911, 949-50 (1972); Comment, *Standing, Separation of Powers, and the Demise of the Public Citizen*, 24 AM. U.L. REV. 835, 872 (1975).

27. *See* Bussie v. Long, 286 So. 2d 689 (La. 1973). *See also* Upper Audubon Ass'n v. Audubon Park Comm'n, 329 So. 2d 206 (La. App. 4th Cir.), *cert. denied*, 333 So. 2d 240 (La. 1976). In *Upper Audubon Ass'n* the plaintiffs alleged that, because a lease awarded to Novelty Enterprises was not granted through public bid, the lease might not provide the highest rental. The court found this potential harm sufficient to allow the plaintiffs standing to sue as taxpayers. 329 So. 2d at 207. In the recent decision of *Pierce v. Board of Supervisors of Louisiana State University*, 392 So. 2d 465 (La. App. 1st Cir. 1980), the first circuit stated:

> The issue of whether a Louisiana taxpayer, as such, absent a special interest, has standing to sue a governmental institution, seems unsettled. *League of Women Voters*, supra, appears to conflict with and overrule the following: *Stewart v. Stanley*, 199 La. 146, 5 So. 2d 531 (1941); *Woodard v. Reily*, 244 La. 337, 152 So. 2d 41 (1963); *Upper Audubon Association v. Audubon Park Commission*, 392 So. 2d 206 (La. App. 4th Cir.), writ denied 333 So. 2d 240 (La. 1976).

Id. at 467 n.3.

28. LA. CONST. art. V, § 16.

29. 297 So. 2d 663 (La. 1974).

30. LA. CONST. art. VII, § 35 (1921) (emphasis added).

isiana Constitution of 1974 vests district courts with original jurisdiction of "all civil and criminal *matters*."[31] As one commentator wrote,

> [T]he jurisdiction is not confined to cases involving state laws or to disputes involving a certain monetary threshold. It is a broad grant of jurisdiction over all matters, consistent with the committee purpose of allowing the legislature to convert the judicial system to a three-tiered one in which no courts of original jurisdiction other than the district courts would exist. The reference to *matters*, rather than *cases*, accommodates ex parte, noncontradictory proceedings in the district courts which may not technically be *adversary* cases.[32]

Even before the 1974 Constitution took effect, the Louisiana Supreme Court adopted a liberal view of standing in *In re Gulf Oxygen*.[33] Holding that the trust code provisions[34] allowing a trustee to apply for *ex parte* proceedings were constitutional, the court noted that it could "find [no] authority holding that [the] performance of the judicial function necessarily involves an adversary proceeding."[35] Nonetheless, this opinion does not abandon totally the notion that some sort of adversity between the parties is required. The functional equivalents of adversity were present in the case, as Professor Maraist has noted:

> Although the trustee is unopposed in the ex parte instruction proceeding, he remains liable to the settlor and beneficiaries for erroneous or negligent acts, including the manner of presentation of the case for ex parte order. In addition the ex parte order will bar the trustee from seeking indemnification from the third party with whom he has dealt. These unusual circumstances should assure that the trustee will be properly motivated to present to the court all of the facts and law available to him surrounding the order. Thus, the requirements of the adversary system may be satisfied although the proceeding is ex parte.[36]

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31. LA. CONST. art. V, § 16 provides: "Except as otherwise authorized by this constitution, *a district court shall have original jurisduction of all civil and criminal matters* . . . ." (emphasis added).

32. Hargrave, *The Judiciary Article of the Louisiana Constitution of 1974*, 37 LA. L. REV. 765, 809-10 (1977) (emphasis added).

33. *In re Gulf Oxygen*, 297 So. 2d 663, 665 (La. 1974), was based upon provisions of the Louisiana Constitution of 1921.

34. LA. R.S. 9:2233(B) (Supp. 1964).

35. 297 So. 2d at 666.

36. *The Work of the Louisiana Appellate Courts for the 1974-1975 Term—Procedure*, 36 LA. L. REV. 556, 558 (1976).

In light of both the 1974 constitution and the more liberal view of standing taken by the Lousiana Supreme Court in *In re Gulf Oxygen*, it is submitted that the taxpayers in *League of Women Voters* had a sufficient interest to assure "adversity," or at the very least, as strong an interest as that exhibited by the plaintiffs in *Bussie* and prior decisions.[37]

This seeming inconsistency with prior jurisprudence could have been avoided if the *League of Women Voters* court had chosen an alternative and more appropriate basis for its decision: the political question doctrine. While basing its opinion on the absence of *standing*, the court nonetheless noted that "[i]nterference by the judiciary at the instance of the plaintiffs would surpass the authority allocated to us in the tripartite system."[38] This seems to indicate that the court was concerned that the matter involved a "political question" better left to another branch of government or to the people.[39]

The political question doctrine was expressed by the Louisiana Supreme Court as early as 1847 in *The First Municipality v. Pease*.[40] In that case it was claimed that a wharfage charge by the City of New Orleans was unconstitutional. The court declined to consider the question, stating that the charge was a matter of municipal administration and not of judicial interpretation.[41] Generally, an issue presented to the courts involves a political question when it presents a matter which should be properly resolved by the executive[42] or legislative[43] branches of government.

The political question doctrine is reflected in article II, sections one and two of the Louisiana Constitution of 1974, which establishes a separation of powers.[44] Additionally, before the 1974 constitutional revision, the 1921 constitution provided that "[n]o function shall ever

37. See note 27, *supra*.

38. 381 So. 2d at 448.

39. See text at note 6, *supra*.

40. 2 La. Ann. 538 (1847). The Louisiana Supreme Court stated:

> The judicial action is put forth in favor of absolute, positive, legal rights; they must be separated by a distinct line of demarcation from those which are subject to the action of other branches of the government, the interference with which must be avoided. Such is, as we understand it, the theory of our system; and upon the observance of the principle of leaving to each branch of government the performance of the functions with which it is invested, its success and durability depends.

Id. at 542.

41. *Id.* at 544.

42. *See, e.g.*, Nicholson v. Thompson, 5 Rob. 367 (La. 1843).

43. *See, e.g.*, Staring v. Grace, 97 So. 2d 669 (La. App. 1st Cir. 1957) (stressing that only the legislature has the power to decide what laws are the most desirable and equitable ones).

44. See text at note 6, *supra*.

be attached to any court of record, or to the judges thereof, except as are *judicial* . . . ."[45] The 1974 counterpart of this article vests judicial power in the state courts, but does not limit expressly the role of courts and judges solely to the performance of *judicial* functions.[46] This omission may give Louisiana courts more flexibility and discretion in deciding cases which, in the past, might have been rejected as involving political questions. Nonetheless, courts will continue to be limited implicitly to the performance of "judicial" functions by separation of power restraints.[47]

Jurisprudence regarding the political question doctrine is, however, no less inconsistent than jurisprudence involving taxpayer standing. Louisiana courts have, on occasion, entered into decision-making traditionally believed to fall into the spheres of influence and authority of other branches of government.[48] This is best exemplified by *Hainkel v. Henry*,[49] wherein the main issues concerned the effect of legislative committee actions during the portion of the eighty-five calendar day session when neither house was in session.[50] The court interpreted the constitutional provisions relating to legislative action and held that the meeting and action of a legislative committee on a day on which neither house is in session does not constitute a "legislative day" and should not be included within the sixty legislative days constitutionally allowed for regular annual sessions.[51] As Professor Hargrave noted,

> [O]ne might wonder why the questions of legislative procedure involved in *Hainkel* reached the court at all, especially via a "friendly" declaratory judgment action instituted by two members of the legislature against the leaders of both houses. One could easily envision that such a question of legislative procedure would have been considered a matter to be decided by the legislature itself, based on its construction of the constitution. The fact that the suit was filed, though, reflects a tendency in Louisiana to expect the courts to exercise broad powers of judicial review and to decide questions many courts would not consider as raising a case or controversy.[52]

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45. LA. CONST. art. VII, § 3 (1921) (emphasis added).

46. LA. CONST. art. V, § 1.

47. LA. CONST. art. II, §§ 1 & 2.

48. *See, e.g.*, Hainkel v. Henry, 313 So. 2d 577 (La. 1975); Abbott v. Parker, 259 La. 279, 249 So. 2d 908 (1971). *But see In re* Michael Baer, 310 So. 2d 537 (La. 1975).

49. 313 So. 2d 577 (La. 1975).

50. *Id.* at 579.

51. *Id.* at 579-80.

52. *The Work of the Louisiana Appellate Courts for the 1974-1975 Term—Louisiana Constitutional Law*, 36 LA. L. REV. 533, 534-35 (1976). In *State v. Gray*, 221 La. 868, 874-75, 60 So. 2d 466, 468 (1952), the Louisiana Supreme Court stated:

Despite the occasional willingness of Louisiana courts to hear such matters, the political question doctrine nonetheless might have provided the supreme court with a more appropriate means of distinguishing *League of Women Voters* from prior taxpayer standing cases, particularly *Bussie*. Ordering the Tax Commission to equalize tax assessments, while giving them two years to comply with the legislative mandate,[53] is not as politically volatile an action as compelling the City Council of New Orleans, a board of elected officials, to vote for an increase in taxes. From this perspective, the court was justified in not hearing the matter, for in the background lurked the problem of how the court would enforce its order should the City Council refuse to vote for a tax increase.

Although these factors may have justified a refusal to entertain the matter, the court could have avoided further confusion in the already inconsistent line of jurisprudence regarding taxpayer *standing* had the court disposed of the case by utilizing the political question doctrine.

Eve Barrie Masinter

THE DECLINE OF THE ENVIRONMENTAL MANDATE: *Stryckers' Bay*—A MODERN WEST SIDE STORY

In October 1971, the Trinity Episcopal School Corporation (Trinity) sued in federal district court to enjoin the New York City Planning Commission (the Commission) and the Department of Housing and Urban Development (HUD) from constructing low-income housing at a site on Manhattan's upper west side.[1] Trinity, which had

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If the Senate failed to observe its own rules when it created the committee which reported this bill, that fact cannot affect the validity of the act because it is well settled that an act of the Legislature will not be declared void or invalid for failure of the legislative body to observe its own rules of procedure. Such rules are usually formulated or adopted by the legislative body itself, and the observance of these rules is a matter entirely within its control and discretion and is not subject to review by the courts as long as the legislative action does not violate some constitutional provision.

See Comment, *Judicial Review of the Legislative Enactment Process: Louisiana's "Journal Entry" Rule*, 41 LA. L. REV. 1187 (1981).

53. 286 So. 2d at 706.

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1. Trinity Episcopal School Corp. v. Romney, 387 F. Supp. 1044 (S.D.N.Y. 1974). In 1969 the Commission, acting in conjunction with HUD, modified implementation of an urban renewal plan on the upper west side of Manhattan after substantial progress toward the plan's completion. Trinity, which had premised its investment in the pro-